

EXHIBIT B

BNSF WORK DESCRIPTION AND LOCAL AGENCY WORK DESCRIPTION AND WORK SCHEDULES

BNSF Work Description

The BNSF Work shall consist of constructing three railroad bridges, one for each main line track, at BNSF milepost 14.95 on line segment 71 in the Village of Western Springs. Each bridge will be 28' long and 13' high supported on piles up to 40' or driven until impedance. This includes associated signal and track work required to place the main line tracks carried by these bridges back in service. It includes only as much excavation as is required to place these bridges; it does not include excavation down to grade. Additionally, 316 LF of sheet pile will be driven within BNSF right of way as requested by Local Agency.

For purposes of the costs cited in section 1.a.1 of this Agreement, BNSF Work does not include the costs associated with flagging for Local Agency's contractor(s).

BNSF anticipates working between the hours of 7:30 AM and 8:00 PM on weekdays; and for weekend work, BNSF anticipates working either between 5:00 AM and 8:00 PM on two weekends when the new bridges have to be placed in service and the old track removed or working one or two weekends with the weekend being a 48 hour consecutive work period (5:00 AM on Saturday to 5:00 AM on Monday) to install the new bridges and remove the old tracks. All of these hours are subject to force majeure and may extend beyond these hours to ensure the track has been returned to a safe operating condition.

The Local Agency grants to the BNSF a variation from its construction work hour regulations set forth in the Western Springs Village Code in order to allow the BNSF to perform its Work as mentioned above.

BNSF Work/Construction Schedule:

Construction start for the BNSF Work will be May 1, 2004 or twelve (12) weeks from execution of the Cooperative Agreement, whichever is later. Substantial completion of the BNSF Force Work is anticipated to be ten (10) weeks after construction start, subject to force majeure.

Local Agency Work Description

The Local Agency Work shall consist of constructing at BNSF milepost 14.95 on line segment 71 in the Village of Western Springs the structural concrete "U" structure and all necessary excavation under the bridge deck to permit its construction, concrete slope walls, concrete sidewalk ADA complaint access

route(s) at entrances, railings and hand rails, structural and non-structural retaining walls, internal and external lighting, security camera(s) and other miscellaneous items as shown on the plans.

Local Agency Work/Construction Schedule:

Construction shall commence post BNSF bridge completion on or about September 15, 2004 subject to the terms stipulated in the BNSF schedule. It is anticipated that substantial completion of the project (all elements except landscaping) will be completed in 12 weeks or approximately December 31, 2004. Landscaping will be completed early spring of 2005, as weather permits.

EXHIBIT "C" COST ESTIMATE

AUTHORITY FOR EXPENDITURE

***** NOTE **** NOTE ***** FOR INTERNAL USE ONLY ***** NOTE **** NOTE *****

LOCATION :	WESTERN SPRINGS	LINE SEGMENT :	71	APE NUMBER :	
PLANITEM NUMBER :	000073813	MILEPOST :	0014.95	RFA NUMBER :	4621904
PROPERTY OF :	BNSF RAILWAY COMPANY	DIVISION :	CH	CPAR NUMBER :	C0000004
OPERATED BY :	BNSF RAILWAY COMPANY	SUBDIVISION :	CHICAGO	BUDGET YEAR :	2004
JOINT FACILITY :	METRA	TRACK TYPE :	1	BUDGET CLASS :	7
% BILLABLE () :	100.00	TAX STATE :	IL	REPORTING OFFICE :	303
		SPONSOR :	VP ENGINEERING	CENTER/ROLLUP :	S4940

PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT 3 EA. NEW BRIDGES AT MP 14.95 ON LS 71 TO BE USED AS PEDESTRAIN UNDERCROSSING IN
WESTERN SPRINGS, IL. - CHICAGO SUBDIVISION. B & B SUPV. W. R. RECKLING. NOTE 100% VILLAGE
& METRA FUNDED SEE DISCRPTION NOTE.

PLAN ITEM	LINE SEG	BEG MP	END MP	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
000073813	71	0014.95	0014.95	WESTERN SPRINGS	WESTERN SPRINGS	BRIDGE-NEW-CONCRETE ON H PILES	2004

***** NOTE **** NOTE ***** FOR INTERNAL USE ONLY ***** NOTE **** NOTE *****

	CASH	CAPITAL	NONCASH	CAPITAL	OPERATING	EXP	REMOVAL	COST	BILLABLE	TOTALS
LABOR COSTS	0			0	0		0		267,586	267,586
MATERIAL COSTS	0			0	0		0		359,786	359,786
OTHER COSTS	0			0	0		0		89,473	89,473
TOTALS	0			0	0		0		716,845	716,845

ENGINEERING SERVICES - KANSAS CITY
ESTIMATE REF. NUMBER : 4621904
PRINTED BY : WASHBURN

REVISED ON : 03/30/2004
COSTING DATE : 03/30/2004
PRINTED ON : 03/30/2004

***** NOTE **** NOTE ***** FOR INTERNAL USE ONLY ***** NOTE **** NOTE *****

LOCATION	: WESTERN SPRINGS	LINE SEGMENT	: 71	AFE NUMBER	:	
PLANITEM NUMBER	: 000073813	MILEPOST	: 0014.95	RFA NUMBER	:	4621904
PROPERTY OF	: BNSF RAILWAY COMPANY	DIVISION	: CH	CPAR NUMBER	:	C0000004
OPERATED BY	: BNSF RAILWAY COMPANY	SUBDIVISION	: CHICAGO	BUDGET YEAR	:	2004
JOINT FACILITY	: METRA	TRACK TYPE	: 1	BUDGET CLASS	:	7
% BILLABLE ()	: 100.00	TAX STATE	: IL COUNTY: COOK	REPORTING OFFICE	:	303
REQUESTER ID	: Q891 - WILLIE MERRILL	MATL DATE	:	SPONSOR	:	VP ENGIN
PROJECT TYPE	: BNCHP	LOCATION CODE	: 381941	DEPT CODE	:	MOWSB
DOT NUMBER	:			DERAILMENT CODE	:	

PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT 3 EA. NEW BRIDGES 28' DBOX (28' LONG X 13 HIGH) - 3 TRACKS W/40' PILES. ***
EXCAVATE TO SET BRIDGES ONLY *** 100% REIMBURSABLE.

NOTE SIGNAL ESTIMATE COST OF MATL AND LABOR HAS BEEN INCLUDED PER REQUEST ON 01/23/03.

NOTE THE ADDITION OF COST NOW INCLUDES THE SHEET PILING MATERIAL (NOW 316 LF SHEET PILES)
AND LABOR COST PER REQUEST TO BE INCLUDED IN THIS RFA.

NOTE THE VILLAGE (WESTERN SPRINGS) WILL FUND NO MORE THEN \$605,913.00 PER AGREEMENT AND
METRA WILL BE FUNDING THE REMAINING AMOUNT.

***** NOTE **** NOTE ***** FOR INTERNAL USE ONLY ***** NOTE **** NOTE *****

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COST	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	267,586	267,586
MATERIAL COSTS	0	0	0	0	359,786	359,786
OTHER COSTS	0	0	0	0	89,473	89,473
TOTALS	0	0	0	0	716,845	716,845

ENGINEERING SERVICES - KANSAS CITY
ESTIMATE REF. NUMBER : 000073813 - 1-46-2L
COSTING DATE : 03/30/2004

PRINTED ON : 03/30/2004
ESTIMATED BY : WASHBURN
PRINTED BY : WASHBURN

ACCT	CST	RSN	PPE	DESCRIPTION	QTY/ST	OT U/M	CASH	NONCASH	OPER	REMOVAL
8		130		CONSTRUCT BRIDGE - CAPITAL	1366.00	87.0 MH	29,769			
8		130		CONSTRUCT BRIDGE - OPERATING	324.00	0.0 MH			6,445	
8		130		PLACE SHEET PILING	430.00	0.0 MH	8,554			
* LABOR SUBTOTAL							38,323	0	6,445	0
1120	319	130		BRIDGE MATERIAL	1.0	LS N	195,420			
1120	319	130		EXCAVATION MATERIAL (BRIDGE)	1415.0	CY N	16,839			
1120	319	130		FILL MATERIAL (BRIDGE)	250.0	CY N	3,500			
1120	319	130		SHEET PILING MATERIAL	1.0	LS N	101,875			
* MATERIAL SUBTOTAL							317,634	0	0	0
1120	790	130		PURCHASE EXPENSE BRIDGE MATL	1.0	LS	23,450			
1120	790	130		TRANSPORTATION BRIDGE	1.0	LS	350			
* OTHER SUBTOTAL							23,800	0	0	0
* ADDITIVES										
				PAYROLL ASSOCIATED COSTS			30,914		5,199	
				EQUIPMENT EXPENSES			20,287		3,411	
				DA LABOR OVERHEADS			34,482		5,799	
				PERDIEM			20,204		3,645	
				INSURANCE EXPENSES			6,042		1,016	
				USE TAX			20,843			
				OFFLINE TRANSPORTATION			4,001			
* GANG TOTAL							516,530	0	25,515	0
8		240		ADJUST RAIL/OTM	102.00	178.5 MH			6,778	
8		163		REPLACE TRACK PANELS - CAP	55.00	96.2 MH	2,596			1,059
8		291		UNLOAD BALLAST - ADDITION - CAP	14.00	24.5 MH	931			
* LABOR SUBTOTAL							3,527	0	6,778	1,059
1120	310	280		BALLAST, FROM ST. CLOUD, MN.	160.0	NT	1,290			
1120	300	150		TRACK PANEL, 136 LB 39 FT RAIL-TIES-	3.0	EA X	8,708			
* MATERIAL SUBTOTAL							9,998	0	0	0
* ADDITIVES										
				PAYROLL ASSOCIATED COSTS			2,845		5,467	854
				EQUIPMENT EXPENSES			1,866		3,588	560
				DA LABOR OVERHEADS			3,172		6,098	953
				INSURANCE EXPENSES			555		1,068	167
				MATERIAL HANDLING			499			
				ONLINE TRANSPORTATION			1,480			
				USE TAX			655			
				OFFLINE TRANSPORTATION			109			
* GANG TOTAL							24,706	0	22,999	3,593
8		400	9911	SIGNAL FIELD LABOR - CAP	28.00	0.0 MH	618			
* LABOR SUBTOTAL							618	0	0	0
1120	319	400	9911	SIGNAL MAINTAINER - MATERIAL BR REN	3.0	DAY	510			
* MATERIAL SUBTOTAL							510	0	0	0
* ADDITIVES										
				PAYROLL ASSOCIATED COSTS			498			
				EQUIPMENT EXPENSES			327			
				DA LABOR OVERHEADS			556			
				INSURANCE EXPENSES			97			
				MATERIAL HANDLING			25			
				USE TAX			33			
				OFFLINE TRANSPORTATION			6			
* GANG TOTAL							2,670	0	0	0
8		291		WORK TRAIN - BALLAST	72.00	36.0 MH	3,190			
* LABOR SUBTOTAL							3,190	0	0	0

ACCT	CST	RSN	PPE	DESCRIPTION	QTY/ST	OT U/M	CASH	NONCASH	OPER	REMOVAL
1120	330	130		WORK TRAIN FUEL - BALLAST	2700.0	GAL	2,187			
* MATERIAL SUBTOTAL							2,187	0	0	0
* ADDITIVES							2,573			
							EQUIPMENT EXPENSES	1,688		
							DA LABOR OVERHEADS	2,870		
							INSURANCE EXPENSES	503		
							USE TAX	143		
* GANG TOTAL							13,154	0	0	0
				WTCREW-3M - WORKTRAIN CREW (3 MAN)						
1120	399	130		ENGINEERING CONTRACT	1.0	LS	2,000			
* OTHER SUBTOTAL							2,000	0	0	0
* GANG TOTAL							2,000	0	0	0
				NONE - NO GANG NEEDED						
8		241		PLACE FIELD WELDS - CAP	106.00	5.3 MH	2,278			
* LABOR SUBTOTAL							2,278	0	0	0
1120	308	201		WELDKIT, GENERIC FOR ALL RAIL WEIGHT	12.0	KT	636			
* MATERIAL SUBTOTAL							636	0	0	0
* ADDITIVES							PAYROLL ASSOCIATED COSTS	1,837		
							EQUIPMENT EXPENSES	1,205		
							DA LABOR OVERHEADS	2,049		
							INSURANCE EXPENSES	359		
							MATERIAL HANDLING	31		
							USE TAX	41		
							OFFLINE TRANSPORTATION	8		
* GANG TOTAL							8,444	0	0	0
				HQWELDGANG-2M - WELDING GANG, 2 MAN						
8		400	9911	SIGNAL FIELD LABOR - CAP	384.00	34.5 MH	9,611			
* LABOR SUBTOTAL							9,611	0	0	0
1120	319	400	9911	REPLACE SIGNAL POLES & HARDWARE	2.0	EA	840			
* MATERIAL SUBTOTAL							840	0	0	0
* ADDITIVES							PAYROLL ASSOCIATED COSTS	7,753		
							EQUIPMENT EXPENSES	5,088		
							DA LABOR OVERHEADS	8,647		
							INSURANCE EXPENSES	1,515		
							MATERIAL HANDLING	42		
							USE TAX	55		
							OFFLINE TRANSPORTATION	10		
* GANG TOTAL							33,561	0	0	0
				SIGMTNER-2M - SIGNAL MAINTAINER, 2 MAN						
PROJECT SUBTOTAL							601,065	0	48,514	3,593
CONTINGENCIES							60,106	0	0	0
BILL PREPARATION FEE							3,308	0	242	17
PROJECT GROSS COST							664,479	0	48,756	3,610
LESS COST PAID BY OTHERS							664,479	0	48,756	3,610
PROJECT NET COST							0	0	0	0

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
METRA

LOCATION:- WESTERN SPRINGS DETAILS OF ESTIMATE PLAN ITEM: 000073813 VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT 3 EA. NEW BRIDGES 28' DBOX (28' LONG X 13 HIGH) - 3 TRACKS W/40' PILES. ***
EXCAVATE TO SET BRIDGES ONLY *** 100% REIMBURSABLE.

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METRA WILL BE FUNDING THE REMAINING AMOUNT.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
***** LABOR *****				
ADJUST RAIL/OTM	280.50	MH	6,778	
CONSTRUCT BRIDGE - CAPITAL	1453.01	MH	29,769	
CONSTRUCT BRIDGE - OPERATING	324.00	MH	6,445	
PLACE FIELD WELDS - CAP	111.30	MH	2,278	
PLACE SHEET PILING	430.00	MH	8,554	
REPLACE TRACK PANELS - CAP	151.25	MH	3,655	
SIGNAL FIELD LABOR - CAP	28.00	MH	618	
SIGNAL FIELD LABOR - CAP	418.56	MH	9,611	
UNLOAD BALLAST - ADDITION - CAP	38.50	MH	931	
WORK TRAIN - BALLAST	108.00	MH	3,190	
PAYROLL ASSOCIATED COSTS			57,940	
EQUIPMENT EXPENSES			38,020	
DA LABOR OVERHEADS			64,626	
PERDIEM EXPENSES			23,849	
INSURANCE EXPENSES			11,322	
TOTAL LABOR COST			267,586	267,586
***** MATERIAL *****				
BALLAST, FROM ST. CLOUD, MN. (MN, P	160.00	NT	1,290	
WORK TRAIN FUEL - BALLAST	2700.00	GAL	2,187	
TRACK PANEL, 136 LB 39 FT RAIL-TIES-OTM	3.00	EA X	8,708	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	12.00	KT	636	
BRIDGE MATERIAL	1.00	LS N	195,420	
EXCAVATION MATERIAL (BRIDGE)	1415.00	CY N	16,839	
FILL MATERIAL (BRIDGE)	250.00	CY N	3,500	
REPLACE SIGNAL POLES & HARDWARE	2.00	EA	840	
SHEET PILING MATERIAL	1.00	LS N	101,875	
SIGNAL MAINTAINER - MATERIAL BR RENEW	3.00	DAY	510	
MATERIAL HANDLING			597	
ONLINE TRANSPORTATION			1,480	
USE TAX			21,770	
OFFLINE TRANSPORTATION			4,134	
TOTAL MATERIAL COST			359,786	359,786
***** OTHER *****				
ENGINEERING CONTRACT	1.00	LS	2,000	
PURCHASE EXPENSE BRIDGE MATL	1.00	LS	23,450	
TRANSPORTATION BRIDGE	1.00	LS	350	
TOTAL OTHER ITEMS COST			25,800	25,800
PROJECT SUBTOTAL				653,172
CONTINGENCIES				60,106
BILL PREPARATION FEE				3,567
GROSS PROJECT COST				716,845
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				716,845

OPERATING PARCEL

[illegible]

67. HENRY, HENRY, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490,

AL327

- OPERATING PARCEL
(PERMANENT EASEMENT)

- CONSTRUCTION PARCEL
(TEMPORARY EASEMENT)

STATE OF ALABAMA)
IN SENATE)
JANUARY 26, 1909)

[illegible][illegible]

Richard D. Kinn
LANDS PROTECTION AND SANCATION DIVISION

[illegible]

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SURVEYING - CONSULTING - CONSTRUCTION LAYOUT

[illegible]

EXHIBIT "E"

FORM APPROVED
BY VP-LAW

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

This Right of Entry Agreement ("Agreement") is entered into effective as of _____ 200_, by and between _____ ("Contractor"), _____ corporation, and The Burlington Northern and Santa Fe Railway Company ("Railway"), a Delaware corporation.

WHEREAS, Railway operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, _____ [insert the appropriate state/municipal agency here] desires Contractor to perform certain construction services adjacent to and upon Railway's right of way and/or property, and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railway entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises (defined herein), Contractor agrees with Railway as follows:

SECTION 1. SCOPE OF SERVICES

Contractor [and/or Agency] will perform the following services, hereinafter described as "Work": _____

Performance of the Work will necessarily require Contractor to enter Railway's right of way and property ("Premises"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railway; and (ii) Contractor provides the Railway with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railway with evidence certifying that the signatory is empowered to execute this Agreement.

SECTION 2. PAYMENT OF FEES

_____ [state/municipal agency] will be responsible for paying Contractor for the Work performed under this Agreement.

SECTION 3. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for, from and against all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right of way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT**

THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement will survive any termination of this Agreement.

SECTION 4. INSURANCE.

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

(a) Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

(b) Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

(c) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

(d) Railroad Protective Liability insurance naming only the Railroad as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement
- ◆ No other endorsements restricting coverage may be added
- ◆ The original policy must be provided to the Railroad prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished.

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

SECTION 5. CONTRACTOR REQUIREMENTS

(a) While on or about the Premises, Contractor must fully comply with Railway's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be responsible for fully informing itself as to Railway "Contractor Requirements".

(b) Prior to entering the Premises, each person providing labor, material, supervision, or services connected with the Work to be performed on or about the Premises must complete the safety training program (hereinafter called, "Railway Contractor Safety Orientation") at the following internet website: "contractororientation.com". Contractor must ensure that each of its employees, subcontractors, agents or invitees completes the Railway Contractor Safety Orientation before any Work is performed under this Agreement. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation prior to entering the Premises. Contractor must renew the Railway Contractor Safety Orientation annually.

(c) Prior to entering the Premises, the Contractor must prepare and implement a safety action plan acceptable to Railway. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the work site and will be available for inspection by Railway at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least 50 feet from the centerline of Railway's nearest track. Contractor must not cross Railway's tracks except at existing open public crossings.

SECTION 6. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES

(a) The Contractor must give Railway's Roadmaster (telephone _____) a minimum of thirty (30) working days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

(b) Railway flagger and protective services and devices will be required and furnished when Contractor's

work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

(1) When in the opinion of the Railway's representative, it is necessary to safeguard the Premises, employees, trains, engines and facilities.

(2) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

(3) When work in any way interferes with the safe operation of trains at timetable speeds.

(4) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

(5) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(c) Flagging services will be performed by qualified Railway flaggers. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(1) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by the Railway's representative.

(2) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

(3) The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the _____/Contractor.

(4) The average train traffic per 24-hour period on this route is _____ freight trains at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH and _____ switch engine movements.

SECTION 7. INDEPENDENT CONTRACTOR

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railway in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work to be performed under this Agreement; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

SECTION 8. TRAIN DELAYS

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railway Representative. Additionally, Contractor must not, at any time, impair the safety of Railway operations or the operations of Railway's lessees, licensees or other Railway invitees. Delays to freight or passenger trains affect BNSF's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be responsible to

Railway, including its subsidiaries, affiliated companies, partners, successors and assigns, for economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

(a) Train Delay Damages

(1) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railway performing Work associated with this project.

(2) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with the Railway. Under such arrangements, if Railway does not meet its contract service commitments, Railway may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor, or its subcontractors.

(3) The contractual relationship between Railway and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the maximum extent consistent with Railway confidentiality obligations. **Damage for certain train delays could be as high as \$50,000 per passenger train.**

(4) Railway will bill Contractor and Contractor must pay Railway within 30 days of receiving invoices detailing damages caused by train delays, whether caused by Contractor, its subcontractors or _____, or by the Railway performing Work associated with this project. The Contractor will be billed at a current rate of \$_____ per freight train hour for each freight train delayed as determined from Railway's records. Each delay may cause delays to more than one freight train at the same time. These rates will be updated annually and Contractor will be billed at rate per hour in effect at the time the delay occurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

(Contractor)

By _____

(Title)

Address _____

**The Burlington Northern and Santa Fe
Railway Company**

By _____
Vice President and Chief Engineer

CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

This Right of Entry Agreement ("Agreement") is entered into effective as of _____ 200__, by and between _____ ("Contractor"), _____ corporation, and The Burlington Northern and Santa Fe Railway Company ("Railway"), a Delaware corporation.

WHEREAS, Railway operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, _____ [insert the appropriate state/municipal agency here] desires Contractor to perform certain construction services adjacent to and upon Railway's right of way and/or property, and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railway entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises (defined herein), Contractor agrees with Railway as follows:

SECTION 1. SCOPE OF SERVICES

Contractor [and/or Agency] will perform the following services, hereinafter described as "Work": _____.

Performance of the Work will necessarily require Contractor to enter Railway's right of way and property ("Premises"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railway; and (ii) Contractor provides the Railway with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railway with evidence certifying that the signatory is empowered to execute this Agreement.

SECTION 2. PAYMENT OF FEES

_____ [state/municipal agency] will be responsible for paying Contractor for the Work performed under this Agreement.

SECTION 3. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for, from and against all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right of way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement will survive any termination of this Agreement.

SECTION 4. INSURANCE.

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

(a) Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to *Railroad* payments related to the Federal Employers Liability Act or a *Railroad* Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
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No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

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(c) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
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Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

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Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished.

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. *Railroad* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

SECTION 5. CONTRACTOR REQUIREMENTS

(a) While on or about the Premises, Contractor must fully comply with Railway's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be responsible for fully informing itself as to Railway "Contractor Requirements".

(b) Prior to entering the Premises, each person providing labor, material, supervision, or services connected with the Work to be performed on or about the Premises must complete the safety training program (hereinafter called, "Railway Contractor Safety Orientation") at the following internet website: "contractororientation.com". Contractor must ensure that each of its employees, subcontractors, agents or invitees completes the Railway Contractor Safety Orientation before any Work is performed under this Agreement. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation prior to entering the Premises. Contractor must renew the Railway Contractor Safety Orientation annually.

(c) Prior to entering the Premises, the Contractor must prepare and implement a safety action plan acceptable to Railway. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the work site and will be available for inspection by Railway at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least 50 feet from the centerline of Railway's nearest track. Contractor must not cross Railway's tracks except at existing open public crossings.

SECTION 6. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES

(a) The Contractor must give Railway's Roadmaster (telephone _____) a minimum of thirty (30) working days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

(b) Railway flagger and protective services and devices will be required and furnished when Contractor's

work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

(1) When in the opinion of the Railway's representative, it is necessary to safeguard the Premises, employees, trains, engines and facilities.

(2) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

(3) When work in any way interferes with the safe operation of trains at timetable speeds.

(4) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

(5) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(c) Flagging services will be performed by qualified Railway flaggers. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(1) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by the Railway's representative.

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(3) The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the _____/Contractor.

(4) The average train traffic per 24-hour period on this route is _____ freight trains at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH and _____ switch engine movements.

SECTION 7. INDEPENDENT CONTRACTOR

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railway in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work to be performed under this Agreement; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

SECTION 8. TRAIN DELAYS

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railway Representative. Additionally, Contractor must not, at any time, impair the safety of Railway operations or the operations of Railway's lessees, licensees or other Railway invitees. Delays to freight or passenger trains affect BNSF's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be responsible to

Railway, including its subsidiaries, affiliated companies, partners, successors and assigns, for economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

(a) Train Delay Damages

(1) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railway performing Work associated with this project.

(2) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with the Railway. Under such arrangements, if Railway does not meet its contract service commitments, Railway may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor, or its subcontractors.

(3) The contractual relationship between Railway and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the maximum extent consistent with Railway confidentiality obligations. **Damage for certain train delays could be as high as \$50,000 per passenger train.**

(4) Railway will bill Contractor and Contractor must pay Railway within 30 days of receiving invoices detailing damages caused by train delays, whether caused by Contractor, its subcontractors or _____, or by the Railway performing Work associated with this project. The Contractor will be billed at a current rate of \$ _____ per freight train hour for each freight train delayed as determined from Railway's records. Each delay may cause delays to more than one freight train at the same time. These rates will be updated annually and Contractor will be billed at rate per hour in effect at the time the delay occurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

(Contractor)

By _____

(Title)
Address _____

**The Burlington Northern and Santa Fe
Railway Company**

By _____
Vice President and Chief Engineer